

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS**

Accolade Systems LLC, a Texas Limited Liability Company,

Plaintiff,

**V.**

01 Communique Laboratory, Inc., an Ontario, Canada corporation; Symantec Corp. a Delaware corporation; LogMeIn, Inc., a Delaware corporation,

Defendants.

Case No.: 06-07CV-047

## JURY TRIAL DEMANDED

**ANSWER AND COUNTERCLAIMS OF  
01 COMMUNIQUE LABORATORY, INC.**

Defendant, 01 Communique Laboratory, Inc. ("01"), files this Answer and Counterclaim in response to the Complaint filed January 30, 2007 by Plaintiff, Accolade Systems LLC ("Accolade").

**ANSWER**

### NATURE OF THE ACTION

1. 01 admits that U.S. Patent No. 7,130,888 ("the '888 patent") issued on October 31, 2006.
- 01 otherwise denies the remaining allegations of paragraph 1 of the Complaint.

**THE PARTIES**

2. 01 admits that the records of the United States Patent & Trademark Office indicate that Accolade is the assignee of the '888 patent, entitled "Method and Apparatus For Controlling A Computer Over A TCP/IP Protocol Network," but otherwise lacks sufficient knowledge to admit or deny the remaining allegations of paragraph 2 of the Complaint.
3. 01 admits the allegations of paragraph 3 of the Complaint.
4. 01 lacks sufficient knowledge to admit or deny the allegations of paragraph 4 of the Complaint.
5. 01 lacks sufficient knowledge to admit or deny the allegations of paragraph 5 of the Complaint.
6. As to the allegations directed to 01, 01 denies the allegations of paragraph 6 of the Complaint; as to the allegations directed to parties other than 01, 01 lacks sufficient knowledge to admit or deny the remaining allegations of paragraph 6 of the Complaint.

**JURISDICTION AND VENUE**

7. 01 admits that Plaintiff's Complaint purports (1) to set forth an action arising under the patent laws of the United States, 35 U.S.C. §§ 101, et seq.; (2) that the Court has jurisdiction over the subject matter of this action pursuant to 35 U.S.C. §§ 1331 and 1338(a); (3) that venue is proper in this District pursuant to 35 U.S.C. §§ 1391(b)-(c) and 1400(b); and (4) that Accolade is the assignee of the '888 patent. 01 denies that it has and continues to infringe under 35 U.S.C. § 271 upon the '888 patent.

**BACKGROUND FACTS**

8. Upon information and belief, 01 admits the allegations of paragraph 8 of the Complaint.
9. As to the allegations directed to 01, 01 denies the allegations of paragraph 9 of the

Complaint; as to the allegations directed to parties other than 01, 01 lacks sufficient knowledge to admit or deny the remaining allegations of paragraph 9 of the Complaint.

10. As to the allegations directed to 01, 01 denies the allegations of paragraph 10 of the Complaint; as to the allegations directed to parties other than 01, 01 lacks sufficient knowledge to admit or deny the remaining allegations of paragraph 10 of the Complaint.

**CLAIM FOR RELIEF**

11. 01 repeats the answers to Accolade's allegations set forth in paragraphs 1-10 of the Complaint.

12. 01 admits that the '888 patent issued on October 31, 2006 and that the records of the United States Patent & Trademark Office indicate that Accolade is the assignee of the '888 patent, but otherwise lacks sufficient knowledge to admit or deny the remaining allegations of paragraph 12 of the Complaint.

13. As to the allegations directed to 01, 01 denies the allegations of paragraph 13 of the Complaint; as to the allegations directed to parties other than 01, 01 lacks sufficient knowledge to admit or deny the remaining allegations of paragraph 13 of the Complaint.

14. As to the allegations directed to 01, 01 denies the allegations of paragraph 14 of the Complaint; as to the allegations directed to parties other than 01, 01 lacks sufficient knowledge to admit or deny the remaining allegations of paragraph 14 of the Complaint.

15. As to the allegations directed to 01, 01 denies the allegations of paragraph 15 of the Complaint; as to the allegations directed to parties other than 01, 01 lacks sufficient knowledge to admit or deny the remaining allegations of paragraph 15 of the Complaint.

**PLAINTIFF'S PRAYER FOR RELIEF**

16. As directed to 01, 01 denies that Accolade is entitled to the relief requested in paragraphs 1-5 of Accolade's Prayer For Relief in the Complaint or to any other relief.

**FIRST AFFIRMATIVE DEFENSE**

17. 01 has not infringed and is not infringing any claim of the '888.

**SECOND AFFIRMATIVE DEFENSE**

18. The '888 patent is invalid for failure to comply with the conditions for patentability specified by 35 U.S.C § 101 *et esq.*

**THIRD AFFIRMATIVE DEFENSE**

19. To the extent that the accused product(s) and/or service(s) have been used or manufactured by or for the United States, Plaintiff's claims and demands for relief are barred by 28 U.S.C § 1498.

**FOURTH AFFIRMATIVE DEFENSE**

20. On information and belief, the '888 patent is unenforceable due to an unreasonable and unexplained delay in prosecution.

**FIFTH AFFIRMATIVE DEFENSE**

21. Accolade is estopped, by way of prosecution history estoppel or otherwise, from asserting that 01 infringes the '888 patent.

**SIXTH AFFIRMATIVE DEFENSE**

22. Accolade is not entitled to injunctive relief because any purported injury to Accolade may be addressed by an adequate remedy at law.

**SEVENTH AFFIRMATIVE DEFENSE**

23. Accolade's Complaint fails to state a claim against 01 upon which relief may be granted.

**RIGHT TO ASSERT ADDITIONAL DEFENSES**

24. 01's investigation into the allegations set forth in Accolade's Complaint are ongoing and discovery has not yet commenced. 01 expressly reserves the right to assert and pursue additional defenses.

**COUNTERCLAIMS**

**Parties and Jurisdiction**

1. 01 is a Canadian company with its offices in Mississauga, Ontario, Canada.
2. Upon information and belief, Accolade is a limited liability company existing under the laws of the State of Texas.
3. This Court has jurisdiction over the Counterclaims pursuant to at least 28 U.S.C. §§ 1331, 1338, 1367, and 2201.
4. Venue is proper in this district under at least 28 U.S.C. §§ 1391 and 1400(b).
5. These counterclaims are for declaratory judgment relief arising under 28 U.S.C. §§ 2201 and 2202, and the United States patent laws, 35 U.S.C. § 101 *et seq.*

**Count I - Declaratory Judgment of Non-infringement of the '888 Patent**

6. 01 has not infringed the '888 patent.
7. 01 is entitled to a declaratory judgment that it has not infringed, and is not infringing, the '888 patent.

**Count II - Declaratory Judgment of Invalidity of the '888 Patent**

8. The '888 patent is invalid for failure to comply with the conditions for patentability specified by 35 U.S.C. § 101 *et seq.*
9. 01 is entitled to a declaratory judgment that the '888 patent is invalid.

**Right to Assert Additional Counterclaims**

10. 01's investigation into the allegations set forth in Accolade's Complaint are ongoing and discovery has not yet commenced. 01 expressly reserves the right to assert and pursue additional counterclaims.

**PRAYER FOR RELIEF**

For the reasons set forth above, 01 prays for this Court's entry of judgment for it and against Accolade as follows:

- A. Declaring the '888 patent to be invalid;
- B. Declaring that 01 has not infringed the '888 patent;
- C. Dismissing Accolade's Complaint with prejudice;
- D. Declaring that this case is exceptional pursuant to 35 U.S.C. § 285;
- E. Awarding to 01 its costs, expenses, and reasonable attorney's fees incurred in defending against Accolade's claims in this action; and
- F. Awarding to 01 such other and further relief as this Court deems just and proper.

Date: August 8, 2007

By:  \_\_\_\_\_

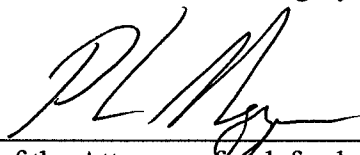
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*Attorneys for Defendant  
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Defendant's Answer to Accolade's Original Complaint was served on August 8, 2007 via the Court's Electronic Filing System on:

  
\_\_\_\_\_  
One of the Attorneys for defendant